

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 02/25/2015

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

Modern Settings LLC (a New York limited liability company) and Modern Settings LLC (a Florida limited liability company), on Behalf of Themselves and all Others Similarly Situated,)	
)	
<i>Plaintiffs,</i>)	
vs.)	Civil Action No 14-CV-9391
)	
BASF Metals Limited, Goldman Sachs International, HSBC Bank USA, N.A. and Standard Bank plc,)	
)	
<i>Defendants.</i>)	

STIPULATION AND [PROPOSED] ORDER

WHEREAS, Plaintiffs commenced the above-captioned action (the “*Action*”) on November 25, 2014;

WHEREAS, on or about January 15, 2015 and February 13, 2015, two other actions, containing substantially similar allegations—entitled *White Oak Fund LP v. BASF Metals Limited, Goldman Sachs International, HSBC Bank USA, N.A., and Standard Bank plc*, No. 14-CV-9391 (S.D.N.Y.), and *Hollin v. BASF Metals Limited, Goldman Sachs International, HSBC Bank USA, N.A., and Standard Bank plc*, No. 15-CV-01036 (S.D.N.Y.)—were filed in this district (the “White Oak/Hollin Actions”), and other actions, purporting to assert claims related or similar to those made in the Action (“*Related Actions*”), might be filed in this district or in another federal judicial district;

WHEREAS, the parties anticipate that the Action, the White Oak/Hollin Actions, and any Related Actions commenced hereafter, would then be the subject of requests for consolidation or coordination, by action either of the Clerk of this Court or through the

procedures established by the Judicial Panel on Multidistrict Litigation (the “*JPML*”);

WHEREAS, the Court has directed that a conference take place in this Action on March 9, 2015, and that the parties file a joint status letter and case management plan on or before March 2, 2015;

WHEREAS, the parties wish to permit, for the sake of efficiency and good order, sufficient time for consolidation or coordination of this Action, the White Oak/Hollin Actions, and any Related Actions that might be commenced before Defendants are required to answer, move or otherwise respond to the complaint(s), and recognize that it would be inefficient to require Defendants serially to respond to multiple complaints raising substantially similar allegations;

WHEREAS, this is the parties’ first request for an adjournment or extension of time; and

WHEREAS, Defendants, unless expressly stated herein, reserve all of their rights and defenses, including as to lack of personal jurisdiction;

1. IT IS HEREBY STIPULATED AND AGREED by and between the parties, through their undersigned counsel, that BASF Metals Limited, Goldman Sachs International, HSBC Bank USA, N.A., and Standard Bank plc waive the need for formal service of process of Plaintiffs’ complaint and agree to and do hereby accept service of the complaint in the above-captioned action and any amended or consolidated and amended complaint filed thereafter;

2. IT IS HEREBY FURTHER STIPULATED AND AGREED that, except as to the sufficiency of process or service of process, Defendants entering into this Stipulation shall not waive any defenses that may be available to Defendants under the Federal Rules of Civil Procedure or any statutory or common law defenses, and Defendants reserve their rights to raise such defenses in response to the complaint in the above-captioned action or any operative,

consolidated, or amended complaint;

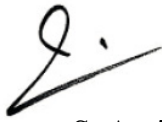
3. IT IS HEREBY FURTHER STIPULATED AND AGREED, subject to the Court's approval, that Plaintiffs in this Action and plaintiffs in the White Oak/Hollin Actions shall file a consolidated amended complaint ("CAC") on or before April 6, 2015. Subject to the provisions of Paragraphs 4 and 5, below, Defendants shall answer, move with respect to, or otherwise respond to the CAC within 60 days of the date on which the CAC is filed (the "Response Date"). ~~If any Defendant files a motion in response to the CAC, Plaintiffs' opposition to such motion shall be filed no later than 60 days after the filing of such motion. Defendants' reply to any such opposition shall be filed no later than 30 days after the filing of such opposition;~~

4. IT IS HEREBY FURTHER STIPULATED AND AGREED that, if any Related Action is commenced prior to the filing of the CAC, Plaintiffs will use their best efforts to coordinate with the plaintiff(s) in the Related Action, and obtain their consent to the terms stated herein, including joining in the filing of the CAC on or before April 6, 2015;

5. IT IS HEREBY FURTHER STIPULATED AND AGREED that, in the event that plaintiffs in such Related Action do not consent to the terms stated herein, the parties shall meet and confer regarding appropriate coordination with such Related Action(s), including seeking action of the Clerk of this Court or through the procedures established by the JPML. For any such Related Action: (a) if the Related Action is filed in another federal judicial district, Defendants will join or otherwise support a request by Plaintiffs to have the Related Action transferred to this Court, and (b) if the Related Action is filed in this Court, and if the parties cannot agree on a joint application to the Court, the respective positions of all the parties to this Stipulation shall be preserved, and each may seek such relief as may be appropriate.

Dated: New York, New York
February 23, 2015

By:



Gregory S. Asciolla
Jay L. Himes
Eric J. Belfi
Michael W. Stocker
Matthew J. Perez
LABATON SUCHAROW LLP
140 Broadway
New York, New York 10005
Tel: (212) 907-0700
Fax: (212) 818-0477
gasciolla@labaton.com
jhimes@labaton.com
ebelfi@labaton.com
mstocker@labaton.com
mperez@labaton.com

*Attorneys for Modern Settings LLC
and Modern Settings LLC*

By:

Michael Lacovara
Matthew J. Galvin
Leah Friedman
FRESHFIELDS BRUCKHAUS DERINGER
US LLP
601 Lexington Avenue
New York, New York 10022
Tel: (212) 277-4000
Fax: (212) 277-4001

Attorneys for HSBC Bank USA, N.A.

Stephen Ehrenberg
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10005
Tel: (212) 558-4000
Fax: (212) 558-3588

Attorneys for Goldman Sachs International

Joseph Serino, Jr., P.C.
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, NY 10022
Tel: (212) 446-4913
Fax: (212) 446-6460
joseph.serino@kirkland.com

Susan M. Davies
G. Patrick Montgomery
KIRKLAND & ELLIS LLP
655 Fifteenth St., N.W.
Washington, D.C. 20005
Tel: (202) 879-5000
Fax: (202) 879-5200
susan.davies@kirkland.com
patrick.montgomery@kirkland.com

Attorneys for BASF Metals Limited

Dated: New York, New York
February 23, 2015

By:

Gregory S. Asciolla
Jay L. Himes
Eric J. Belfi
Michael W. Stocker
Matthew J. Perez
LABATON SUCHAROW LLP
140 Broadway
New York, New York 10005
Tel: (212) 907-0700
Fax: (212) 818-0477
gasciolla@labaton.com
jhimes@labaton.com
ebelfi@labaton.com
mstocker@labaton.com
mperez@labaton.com

*Attorneys for Modern Settings LLC
and Modern Settings LLC*

By:



Michael Lacovara
Matthew J. Galvin
Leah Friedman
FRESHFIELDS BRUCKHAUS DERINGER
US LLP
601 Lexington Avenue
New York, New York 10022
Tel: (212) 277-4000
Fax: (212) 277-4001

Attorneys for HSBC Bank USA, N.A.

Stephen Ehrenberg
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10005
Tel: (212) 558-4000
Fax: (212) 558-3588

Attorneys for Goldman Sachs International

Joseph Serino, Jr., P.C.
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, NY 10022
Tel: (212) 446-4913
Fax: (212) 446-6460
joseph.serino@kirkland.com

Susan M. Davies
G. Patrick Montgomery
KIRKLAND & ELLIS LLP
655 Fifteenth St., N.W.
Washington, D.C. 20005
Tel: (202) 879-5000
Fax: (202) 879-5200
susan.davies@kirkland.com
patrick.montgomery@kirkland.com

Attorneys for BASF Metals Limited

Dated: New York, New York
February 23, 2015

By:

Gregory S. Asciolla
Jay L. Himes
Eric J. Belfi
Michael W. Stocker
Matthew J. Perez
LABATON SUCHAROW LLP
140 Broadway
New York, New York 10005
Tel: (212) 907-0700
Fax: (212) 818-0477
gasciolla@labaton.com
jhimes@labaton.com
ebelfi@labaton.com
mstocker@labaton.com
mperez@labaton.com

*Attorneys for Modern Settings LLC
and Modern Settings LLC*

By:

Michael Lacovara
Matthew J. Galvin
Leah Friedman
FRESHFIELDS BRUCKHAUS DERINGER
US LLP
601 Lexington Avenue
New York, New York 10022
Tel: (212) 277-4000
Fax: (212) 277-4001

Attorneys for HSBC Bank USA, N.A.


Stephen Ehrenberg
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10005
Tel: (212) 558-4000
Fax: (212) 558-3588

Attorneys for Goldman Sachs International

Joseph Serino, Jr., P.C.
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, NY 10022
Tel: (212) 446-4913
Fax: (212) 446-6460
joseph.serino@kirkland.com

Susan M. Davies
G. Patrick Montgomery
KIRKLAND & ELLIS LLP
655 Fifteenth St., N.W.
Washington, D.C. 20005
Tel: (202) 879-5000
Fax: (202) 879-5200
susan.davies@kirkland.com
patrick.montgomery@kirkland.com

Attorneys for BASF Metals Limited

Dated: New York, New York
February 23, 2015

By:

Gregory S. Asciolla
Jay L. Himes
Eric J. Belfi
Michael W. Stocker
Matthew J. Perez
LABATON SUCHAROW LLP
140 Broadway
New York, New York 10005
Tel: (212) 907-0700
Fax: (212) 818-0477
gasciolla@labaton.com
jhimes@labaton.com
ebelfi@labaton.com
mstocker@labaton.com
mperez@labaton.com

*Attorneys for Modern Settings LLC
and Modern Settings LLC*

By:

Michael Lacovara
Matthew J. Galvin
Leah Friedman
FRESHFIELDS BRUCKHAUS DERINGER
US LLP
601 Lexington Avenue
New York, New York 10022
Tel: (212) 277-4000
Fax: (212) 277-4001

Attorneys for HSBC Bank USA, N.A.

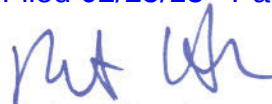
Stephen Ehrenberg
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10005
Tel: (212) 558-4000
Fax: (212) 558-3588

Attorneys for Goldman Sachs International


Joseph Serino, Jr., P.C.
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, NY 10022
Tel: (212) 446-4913
Fax: (212) 446-6460
joseph.serino@kirkland.com

Susan M. Davies
G. Patrick Montgomery
KIRKLAND & ELLIS LLP
655 Fifteenth St., N.W.
Washington, D.C. 20005
Tel: (202) 879-5000
Fax: (202) 879-5200
susan.davies@kirkland.com
patrick.montgomery@kirkland.com

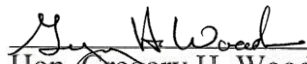
Attorneys for BASF Metals Limited



Robert Houck
CLIFFORD CHANCE, LLP
31 West 52nd Street
New York, NY 10019
Tel: (212) 878-8000
Fax: (212) 878-8001
Robert.Houck@cliffordchance.com

The Court does not accept the proposed briefing schedule for filing opposition and reply papers set forth in paragraph 3. As required by the Court's Individual Rules, if defendants anticipate filing a motion to dismiss, defendants must first request a pre-motion conference with the Court. Defendants' request must be made at least one week in advance of the parties' stipulated "Response Date." The briefing schedule for filing opposition and reply papers to this motion will be set by the Court at the pre-motion conference.

SO ORDERED:


Hon. Gregory H. Woods
United States District Judge

gm

Dated: February 25, 2015

New York, New York

Attorneys for Standard Bank plc